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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 BETTA PRODUCTS, INC., et al.,

No. C 05-02273 CRB

12 Plaintiffs,

13 v.

ORDER

14 TRANSGLOBAL COMMUNICATIONS, et
15 al.,

16 Defendants.
17 _____/

18 This adversary proceeding was withdrawn from bankruptcy court. The debtor, Betta
19 Products, Inc. (“Betta”), alleges that defendants misappropriated Betta’s trade secrets. Now
20 pending before the Court are plaintiff Dana McCurnin’s motion for reconsideration and
21 defendants’ motions to dismiss and to strike with respect to the Second Amended Complaint.
22 After carefully reviewing the papers filed by the parties, the Court concludes that oral
23 argument is unnecessary, see Local Rule 7-1(b), and rules as is set forth below.

24 1. Plaintiff Dana McCurnin’s motion for reconsideration is GRANTED. It would
25 be manifestly unjust *at this early stage of the proceedings* to deprive plaintiffs of their non-
26 bankruptcy claims because of their counsel’s mistake. Counsel notified the Court of
27 counsel’s mistake at the hearing on defendants’ motion to dismiss, and promptly filed a
28 motion for reconsideration. Defendants have not persuaded this Court that it should refuse to
consider McCurnin’s claims on their merits.

1 Defendants have also failed to persuade the Court that McCurnin, the Trustee of the
2 Betta Products Litigation Trust, does not have standing to pursue the non-bankruptcy claims.
3 The Betta Products Litigation Trust Agreement unambiguously gave McCurnin, as Trustee,
4 the right to prosecute the non-bankruptcy claims. Defendants have not provided any
5 evidence or law that suggests the assignment is invalid. Accordingly, the Court's order of
6 September 7, 2005 is vacated to the limited extent it dismissed the claims of plaintiff
7 McCurnin.

8 2. Defendants' motion to dismiss the Second Amended Complaint is dismissed as
9 moot.

10 3. Defendants' motion to strike is granted in part and denied in part. The
11 incorporation of paragraph 38 into paragraph 39 is stricken as plaintiffs agree that the claim
12 for unfair business practices should not include a demand for punitive damages. In all other
13 respects the motion is denied. As the Court previously stated, it is not now ruling on what
14 constitutes restitution. Plaintiffs appear to contend that lost past profits and business
15 opportunities constitute restitution. While plaintiffs may be wrong, that is a decision the
16 Court will make at a later date.

17 4. Plaintiffs shall file a third amended complaint within 20 days of the date of this
18 Order. Such complaint shall include Dana McCurnin as a plaintiff, and shall comply with the
19 Court's ruling on the motion to strike.

20 5. Counsel is directed to review and comply with the Local Rules for the Northern
21 District of California, and, in particular, the rules governing pleadings. For example, Rule 7-
22 2(b) provides that the notice of motion and memorandum in support of the motion should be
23 in a *single* document.

24 6. It has become apparent to the Court that counsel are not cooperating and, as a
25 result, their clients resources, and, most importantly, the resources of this Court, are being
26 wasted. The Court expects counsel to meet and confer and to respond promptly when
27 contacted by opposing counsel. With respect to the present motions, the parties should have
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1 stipulated to deferring the filing of the second amended complaint, and thus defendants'
2 response, until the Court adjudicated the motion for reconsideration.

3 7. The parties shall still appear at 10:00 a.m. on Friday, November 18, 2005 for a
4 case management conference,

5 **IT IS SO ORDERED.**

6
7 Dated: November 15, 2005



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California